

**CABLE ORDINANCE**

**CHARLES COUNTY, MARYLAND**

April 22, 2002



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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLES COUNTY, MARYLAND, PRESCRIBING PROCEDURES AND REQUIREMENTS RELATING TO CABLE TELEVISION FRANCHISES TO REFLECT CHANGES IN APPLICABLE LAW AND TO BETTER ENSURE THAT USE OF PUBLIC RIGHTS-OF-WAY BY CABLE SYSTEMS SERVES THE PUBLIC INTEREST.

Be it ordained by the Board of County Commissioners of Charles County, Maryland as follows:

**1. GENERAL PROVISIONS**

(a) *Title.* This Ordinance shall be known and may be cited as the “County Cable Communications Regulatory Code.”

(b) *Effective Date and Repealer.* This Ordinance shall take effect and be in force from and after passage.

(c) *Delegation of Powers.* The County may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this Ordinance or any franchise agreement to any employee, officer, department or agency of the County, except where prohibited by applicable law.

**2. DEFINITIONS AND WORD USAGE**

## **2: DEFINITIONS AND WORD USAGE**

### **2(a): Definitions and Usage - General**

#### *(a) Definitions and Usage - General*

For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

*(b) Access Channel.* Any channel on a cable system set aside by a franchisee for public, educational, or governmental use.

*(c) Affiliate.* Any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

## 2: DEFINITIONS AND WORD USAGE

### 2(d): Board

- (d) *Board.* The Board of County Commissioners of the County.
- (e) *Cable Act.* The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 *et seq.*
- (f) *Cable Commission or Commission.* The Cable Advisory Commission created pursuant to this Ordinance.
- (g) *Cable Operator.* A person or group of persons (1) which, directly or through one or more affiliates, provides cable service and directly or through one or more affiliates owns a significant interest in such a system; or (2) which otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- (h) *Cable Service.* (1) The one-way transmission to subscribers of video programming or other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.



## **2: DEFINITIONS AND WORD USAGE**

### **2(i): Cable System or System**

(i) *Cable System or System.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the County, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public rights-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming directly to subscribers; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

(j) *Channel.* A portion of the electromagnetic frequency spectrum that is used in a cable system and that is capable of delivering a television channel as defined by the FCC.

(k) *County.* Charles County, Maryland, and any agency, department, or agent thereof.

(l) *Converter.* An electronic device which may serve as an interface between a system and a subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

(m) *Educational Access Channel or Educational Channel.* Any channel on a cable system set aside by a franchisee for educational use.

## 2: DEFINITIONS AND WORD USAGE

2(n): FCC

(n) *FCC.* The Federal Communications Commission, its designee, or any successor governmental entity thereto.

(o) *Franchise.* A non-exclusive authorization granted pursuant to this Ordinance to construct, operate, and maintain a cable system along the public rights-of-way to provide cable service within all or a specified area of the County. Any such authorization, in whatever form granted, shall not mean or include (1) any work permit required for excavating or performing other work in or along public rights-of-way, or (2) any generally applicable business license required for the privilege of transacting and carrying on a business with the County..

(p) *Franchise Agreement.* A contract entered into pursuant to this Ordinance between the County and a franchisee that sets forth the terms and conditions under which a franchise will be granted and exercised.

(q) *Franchise Area.* The area of the County that a franchisee is authorized to serve by its franchise agreement.

(r) *Franchisee.* A natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a franchise by the County.

(s) *Governmental Access Channel or Governmental Channel.* Any channel on a cable system set aside by a franchisee for government use.

(t) *Installation.* The connection of a cable system from feeder cable to subscriber terminals and the provision of service.

(u) *Institutional Network or Network:* This term shall have the meaning given to it in a franchisee's franchise agreement.

**2: DEFINITIONS AND WORD USAGE**  
**2(v): Leased Access Channel or Commercial Access Channel**

(v) *Leased Access Channel or Commercial Access Channel.* Any channel on a cable system designated for commercial use by a person unaffiliated with the franchisee.

(w) *PEG.* Public, educational, and governmental.

(x) *Person.* An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(y) *Public Access Channel.* Any channel on a cable system set aside by a franchisee for use by the general public.

(z) *Public Rights-of-Way.* The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, waterway, easement, or similar property within the County which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system.

(aa) *Security Fund.* A performance bond, letter of credit, or cash deposit, or any or all of these, to the extent applicable to a given franchisee.

(bb) *Service Interruption.* Loss of picture or sound on one or more channels, or degradation of picture or sound beyond practically usable levels.

(cc) *Subscriber.* Any person who lawfully receives any service delivered over a cable system.

(dd) *System Upgrade.* A major improvement or enhancement in the technology or service capabilities made by the Franchisee to its Cable System.

(ee) *Transfer*

## 2: DEFINITIONS AND WORD USAGE

### 2(ee): Transfer

- (1) “Transfer” shall mean any transaction in which:
  - (A) an ownership or other right, title, or interest of more than 10 percent for voting interests or 20 percent for non-voting interests in a franchisee or its cable system is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part;
  - (B) there is any change of control of a franchisee;
  - (C) the rights or obligations held by a franchisee under the franchise are transferred, directly or indirectly, to another party;
  - (D) any change or substitution occurs in the managing general partners of a franchisee; or
  - (E) a franchisee, or its corporate parent at any level, enters into a transaction that materially increases, directly or indirectly, the debt that is to be borne by the cable system in a manner that may adversely affect system rates or services.

(2) “Transfer” does not include a transaction involving only persons who own, are owned by, or are under common ownership with the franchisee if the transaction does not materially affect the ultimate control of the franchisee or the sources and amounts of funds available to the franchisee.

(3) “Control” for purposes of this Section means the legal or practical ability to exert actual working control over the affairs of a franchisee, either directly or indirectly,

whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

(ff) *User.* A person or organization lawfully using a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the purpose of receiving material in the capacity of a subscriber.

**3. GRANT OF FRANCHISE**

(a) *Grant.*

(1) The County may grant one or more cable franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this Ordinance and applicable obligations of the County.

(2) This Ordinance is not a contract between the County and a franchisee, and the County is not prohibited from amending any of the provisions of this Ordinance.

(3) No person may construct or operate a cable system in the County without a franchise granted by the County. No person may be granted a franchise without having entered into a franchise agreement with the County pursuant to this Ordinance.

(b) *Term of Franchise.* No franchise shall be granted for a period of more than fifteen (15) years, except that a renewal or extension may be granted pursuant to applicable law.

(c) *Franchise Characteristics.*

(1) A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a cable system to provide cable service within a franchise area, but does not

**3: GRANT OF FRANCHISE**  
**3(d): Franchisee Subject to Other Laws, Police Power**

expressly or implicitly authorize a franchisee to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(2) A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this Ordinance and the franchise agreement.

(3) A franchise is nonexclusive, and the County may grant additional franchises for a cable system pursuant to this Ordinance and such an additional grant shall not operate to materially modify, revoke, or terminate rights previously granted to a franchisee.

(4) The privileges prescribed by a franchise shall not give the franchisee priority with respect to the County's use or any other lawful occupancy of the public rights-of-way.

(5) The County reserves the right to reasonably designate where a franchisee's facilities are to be placed within the public rights-of-way and to resolve any disputes among users of the public rights-of-way.

*(d) Franchisee Subject to Other Laws, Police Power*

(1) In accepting a franchise, a franchisee:

- (A) acknowledges that its rights under the franchise are subject to the police powers of the County to adopt and enforce ordinances necessary to the safety and welfare of the public; and
- (B) agrees to comply with all applicable ordinances enacted by the County under its police power.

**3: GRANT OF FRANCHISE**  
**3(e): Operation of a Cable System Without a Franchise**

(2) Nothing in a franchise agreement shall be deemed to waive the requirements of generally applicable codes and ordinances of the County regarding permits, zoning, fees to be paid, or the like.

(3) No course of dealing between a franchisee and the County, or any delay on the part of the County in exercising any rights hereunder, or any acquiescence by the County in the actions of a franchisee that are in contravention of such rights (except to the extent such rights are expressly waived by the County) shall operate as a waiver of any such rights of the County.

*(e) Operation of a Cable System Without a Franchise*

Any person who occupies the public rights-of-way of the County for the purpose of operating or constructing a cable system and who does not hold a valid franchise from the County shall be subject to all provisions of this Ordinance, including but not limited to its provisions regarding construction standards and franchise fees. In its discretion, the County at any time may require such person to enter into a franchise agreement within one hundred twenty (120) days of receipt of a written notice by the County that a franchise agreement is required, unless the County in its sole discretion extends such time period,. If such person does not enter into a franchise agreement acceptable to the County within such time period, the County may require such person to remove its property and restore the area to a condition satisfactory to the County within a reasonable time period, as the County shall determine; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and

#### **4: PROVISION OF CABLE SERVICE.**

##### **3(f): Acts at Franchisee's Expense**

seeking damages under trespass. In no event shall a franchise be created unless it is issued by action of the County and subject to a written franchise agreement.

##### *(f) Acts at Franchisee's Expense*

Any act that a franchisee is or may be required to perform under this Ordinance, a franchise agreement, or applicable law shall be performed at the franchisee's expense, unless expressly provided to the contrary in this Ordinance, the franchise agreement, or applicable law.

##### *(g) Eminent Domain*

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain to the extent to which they may apply to any public utility or cable system.

#### **4. PROVISION OF CABLE SERVICE.**

*(a) Availability of Cable Service.* Subject to the line extension provisions of its franchise agreement, a franchisee shall offer cable service to all residences, businesses and other structures within the franchise area, including multiple dwelling unit buildings, whose owners or occupants request cable service, except for multiple dwelling unit buildings to which the Franchisee cannot legally obtain access.

##### *(b) Continuity of Service*

(1) It is the right of each subscriber to continue receiving service if the subscriber's financial and other obligations to the franchisee are honored. If a franchisee elects to transfer the system, or the County gives notice of intent to revoke or fails to renew the franchise, the franchisee shall act so as to ensure that all subscribers receive continuous, uninterrupted service. If there is a change of franchisee, or if a new operator acquires the system, the original



## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(a): System Characteristics**

franchisee shall cooperate with the County, new franchisee, or operator in maintaining continuity of service to all subscribers. During any transition period, the franchisee is entitled to the revenues for any period during which it operates the system.

(2) If a franchisee fails to operate the system for seven consecutive days without prior approval of the County or without just cause, the County may operate the system or designate an operator until the franchisee restores service under conditions acceptable to the County or a permanent operator is selected. If the County is required to fulfill this obligation for the franchisee, then during that time the County is entitled to collect all revenues from the system. The franchisee shall reimburse the County for all reasonable costs or damages in excess of the revenues collected by the County that are the result of the franchisee's failure to perform.

## **5. SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

(a) *System Characteristics.* A franchisee's cable system shall, at all times during the franchise term, meet or exceed the following requirements:

(1) *Compliance With FCC Rules.* All maintenance performed on the cable system by the franchisee shall be in accordance with the FCC rules and regulations governing the technical performance and operating standards for such system.

(2) *No Deterioration to Access Signals.* The system shall be so constructed and operated that any PEG access signals or leased access signals will have the same general transmission quality as commercial services on the system.

(3) *Industry-accepted Equipment.* The system shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to

## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(a): System Characteristics**

backup power supplies capable of providing power to the system for not less than two hours according to manufacturer's reasonable specifications, in view of local conditions, in the event of an electrical outage. The obligation to provide such backup power supplies shall apply to the franchisee's headend, each fiber optic node, and any other location(s) within the system necessary to maintain service to subscribers for not less than two hours in the event of an electrical outage, as described above. The franchisee shall comply with all applicable laws and regulations concerning system compatibility with subscribers' television receivers and/or videocassette recorders.

(4) Consumer Equipment For Lease or Sale. Subject to applicable law or regulation, a franchisee shall offer every subscriber, at uniform prices and regardless of the level of service taken, the opportunity to lease or buy converters that utilize wireless remote controls and that allow subscribers to view a program on one channel while taping a program on another channel.

(5) Parental Control. A franchisee shall ensure that means are available to enable subscribers to block out audio and video on any undesired channels on the system.

(6) Program Security. A system shall include equipment so that any pay-per-view programming can only be activated by the positive action of a subscriber using, for example, a private identification number or other individual selection procedure.

(7) Handicapped Service. All closed-caption programming retransmitted by a system shall include the closed-caption signal. For hearing impaired subscribers, a franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, a franchisee must make

## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(b): Integration of Advancements in Technology**

arrangements that will allow hearing impaired customers to contact the company by telephone, and will work cooperatively with any services that allow hearing-impaired customers to contact the Franchisee by telephone. Upon request, a franchisee shall provide, for purchase or lease at the lowest uniform price, a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.

(b) *Integration of Advancements in Technology.* In addition to any upgrades required in its franchise agreement, if a franchisee's franchise agreement does not specifically provide for a mid-term review, it shall be the responsibility of a franchisee to periodically upgrade its cable system to integrate advancements in technology as may be required to meet the needs and interests of the community in light of the costs thereof.

(c) *System Design Review Process.* At least sixty (60) days prior to the date construction of any upgrade commencing after the effective date of this Ordinance is scheduled to commence, a Franchisee shall provide a detailed system design and construction plan, available for review by the County at the local office of the franchisee, which shall include at least the following elements:

- (1) Design type, trunk and feeder design, and number and location of hubs or nodes.
- (2) Distribution system equipment to be used.
- (3) Plans for standby power.
- (4) Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber).
- (5) Design maps and trunk tree maps for the system.

## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(d): Periodic Progress Reporting**

The system design will be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant. The County may review the plan and, within thirty (30) days of the date the plan is made available for County review, submit comments to the Franchisee. Within fifteen (15) days of receipt of the comments, the franchisee shall submit a revised plan to the County, either incorporating the comments or explaining why the comments were not included. The County may take any appropriate action it is entitled to take under this Ordinance, the franchise agreement, or other applicable law if it believes the design plan fails to satisfy or is likely to fail to satisfy the franchisee's obligations. The County's review does not excuse any non-performance under this Ordinance, the franchise agreement or other applicable law.

#### *(d) Periodic Progress Reporting*

Following the commencement of construction of a system upgrade or any similar major construction, every three (3) months until the construction is completed, a franchisee shall meet with the County and provide an update on the progress of the upgrade according to the franchisee's general plan, unless the County waives such meeting. Upon request, the franchisee shall provide detailed written reports to the County on the franchisee's progress in construction.

(1) **Public Notification.** Prior to the beginning of any system upgrade construction, and periodically during each phase, the franchisee shall inform the public and its subscribers about the progress of the upgrade, areas where construction crews will be working and any expected temporary interruptions to existing services which may occur.

## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(d): Periodic Progress Reporting**

(2) Delays in the System Upgrade. A franchisee shall not be excused from the timely performance of its obligation to begin and complete any system upgrade within the times specified herein, except for the following occurrences:

- (A) Any “*force majeure*” situation, as described herein;
- (B) Unreasonable failure or delay by the County to issue any permits or permission upon a timely request submitted by the franchisee or its contractor representative and tender of any required permit fee;
- (C) Delays beyond the control of the franchisee that the franchisee could not reasonably have anticipated regarding the availability, shipment and arrival of necessary equipment, cables, electronics or hardware, protracted underground excavation, easement availability, changes in contractors or contractor personnel, or any other valid factor agreed to by the County as fully explained and reasonably justified in writing to the County or its designee.

(3) Consequences of Delays. Absent a showing of excusable delay pursuant to subsection 5(d)(2) above, should a franchisee be unable to demonstrate the commencement or timely completion of the system upgrade by the times specified herein, or be unable to reasonably justify any delays, then the franchisee shall be in violation of a material provision of its franchise agreement and the County may, in its sole discretion, either grant the franchisee an extension of time to complete such construction or implement any enforcement measures specified in its franchise agreement or this Ordinance, including but not limited to revocation of the franchise.

## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(e): Technical Standards**

#### *(e) Technical Standards*

A cable system shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by the County subject to applicable federal law.

#### *(f) Types of Service*

Any change in programs or services offered shall comply with all lawful conditions and procedures contained in its franchise agreement and in applicable law. A franchisee shall provide thirty (30) days' advance written notice to subscribers and the County of any change in channel assignment or in the video programming service provided over any channel, unless this requirement is waived by the County or by operation of federal or state law, or due to events beyond the reasonable control of the franchisee.

#### *(g) Leased Access Channels*

A franchisee shall provide leased access channels as required by federal law.

#### *(h) Interconnection*

(1) Franchisee shall cooperate in interconnection of the cable systems in the County by the County so as to permit access programming originating from any sites on the Internet to be transmitted simultaneously to all subscribers of any cable systems in the County. Franchisee shall ensure that its system design does not impair the County's ability to provide such access programming to all such subscribers.

(2) Franchisee shall make available its technical expertise at no charge to assist in the planning and construction of the interconnection network.

#### *(i) Customer Service Monitoring*

## **5: SYSTEM FACILITIES, EQUIPMENT AND SERVICES.**

### **5(j): Emergency Alert System**

A franchisee shall keep such records as are required to enable the County to determine whether the franchisee is complying with all telephone answering standards required by applicable customer service regulations, as amended from time to time.

#### *(j) Emergency Alert System*

(1) A franchisee shall install and thereafter maintain for use by the County an Emergency Alert System (“EAS”).

(2) This EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on the franchisee's system that may lawfully be overridden, without the assistance of the franchisee, for emergency broadcasts from a location designated by the County in the event of a civil emergency or for reasonable tests.

(3) The County will provide reasonable notice to the franchisee prior to any test use of the EAS. The franchisee shall cooperate with the County in any such test.

*(k) Uses of System:* A franchisee must advise the County of all active uses of the system, for both entertainment and other purposes, within thirty days after commercial deployment of such uses, and the County shall have the right to conduct unannounced audits of such usage.

#### *(l) Additional Capacity*

A franchisee shall notify the County in advance of the installation of any fiber optic capacity not contemplated by the initial design of the system, so that additional fiber may be installed on an incremental cost basis for government and institutional use.

**6: APPLICATIONS FOR FRANCHISE**  
**5(m): Periodic Performance Evaluation**

*(m) Periodic Performance Evaluation*

The County may schedule periodic review sessions to evaluate the performance of a franchisee, or to discuss the integration of future technologies, other plans or operations of the franchisee or any aspect of the franchisee's cable system. The franchisee shall cooperate with the County in any such evaluation.

**6. APPLICATIONS FOR FRANCHISE**

*(a) Applicability.* Sections 6(b) through 6(d) of this Section shall apply to all cable systems not already providing cable service in the County on the effective date of this Ordinance.

*(b) Application Required*

(1) A written application shall be filed with the County for grant of an initial franchise.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.

(3) All applications accepted for filing shall be made available by the County for public inspection.

(4) To be acceptable for filing, an application submitted after the effective date of this Ordinance shall be accompanied by a nonrefundable filing fee, payable to the County, in the amount of \$25,000, to cover costs incidental to the awarding of the franchise. In



**6: APPLICATIONS FOR FRANCHISE**  
**6(c): Application for Grant of an Initial Franchise**

addition, the County may require the applicant to reimburse the County for any additional reasonable out-of-pocket expenses the County incurs in considering the application, including consultants' fees.

*(c) Application for Grant of an Initial Franchise*

(1) A person may apply for an initial franchise by submitting an application containing the information required in Section 6(d). Upon receipt of such an application, the County may either (a) evaluate the application pursuant to Section 6(c)(3), conducting such investigations as it deems necessary; or (b) issue a Request for Proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future cable-related needs and interests of the community. Any such RFP shall be mailed to the person requesting its issuance and made available to any other interested party. The RFP may contain a proposed franchise agreement.

(2) An applicant shall respond to a RFP by filing an application within the time directed by the County, providing the information and material set forth in Section 6(d). The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to subsection 6(c)(1)(a) herein need not refile the same materials with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

(3) In evaluating an application for a franchise, the County shall consider, the following factors:

**6: APPLICATIONS FOR FRANCHISE**  
**6(c): Application for Grant of an Initial Franchise**

- (A) The extent to which the applicant has substantially complied with applicable law and the material terms of any existing cable franchise for the County;
- (B) Whether the quality of any prior service by the applicant in the County, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;
- (C) Whether the applicant has the financial, technical, and legal qualifications to provide cable service;
- (D) Whether the application satisfies any minimum requirements established by the County and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;
- (E) Whether, to the extent not considered under subsection 6(c)(3)(D), the applicant will provide adequate Public, Educational, and Governmental access channel capacity, facilities, or financial support;
- (F) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve

**6: APPLICATIONS FOR FRANCHISE**  
**6(c): Application for Grant of an Initial Franchise**

disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

- (G) What effects a grant of the application may have on competition in the delivery of cable service in the County.
- (H) Any other harm or benefit to the public interest that would result from granting the application.

(4) If the County finds that it is in the public interest to issue a franchise considering the factors set forth above, and subject to the applicant's entry into an appropriate franchise agreement, it shall issue a franchise. If the County denies a franchise, it will issue a written decision explaining why the franchise was denied. Prior to deciding whether or not to issue a franchise, the County may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The County also may grant or deny a request for a franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Ordinance is not intended and shall not be interpreted to grant any applicant or existing franchisee standing to challenge the denial of its application or the issuance of a franchise to another.

*(d) Contents of Application*

An RFP for the grant of an initial franchise shall require, and any such application shall contain, at a minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with five (5) percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other cable system ownership interest of each named person.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including but not limited to a demonstration that the applicant meets the following criteria:

(A) The applicant must have the necessary authority under Maryland law to operate a cable system.

(B) The applicant must have the necessary authority under federal law to hold the franchise and operate a cable system. An applicant must have, or show that it is qualified to obtain, any necessary federal franchises or waivers required to operate the system proposed.

## **6: APPLICATIONS FOR FRANCHISE**

### **6(d): Contents of Application**

(4) A demonstration of the applicant's financial ability to complete the construction and operation of the cable system proposed.

(5) A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or any interest therein.

(6) Identification of the area of the County to be served by the proposed cable system, including a description of the proposed franchise area's boundaries.

(7) A detailed description of the physical facilities proposed, including channel capacity, performance characteristics, and access facilities.

(8) Where applicable, a description of the proposed construction schedule.

(9) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support to meet the community's needs and interests.

(10) Pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(11) If the applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur

**6: APPLICATIONS FOR FRANCHISE**  
**6(e): Application for Grant of a Renewal Franchise**

and the ability of the public rights-of-way and other property that would be used by the applicant to accommodate an additional system.

(12) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

(13) Any additional information that the County may request of the applicant that is relevant to the County's consideration of the application.

(14) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

(15) The County may, upon request of an applicant, waive in writing the provision of any of the information required by this Section 6(d).

*(e) Application for Grant of a Renewal Franchise*

The renewal of any franchise to provide cable service shall be conducted in a manner consistent with applicable federal law.

*(f) Public Hearing*

Prior to the issuance of a franchise, the County shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which the applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

**7. DESIGN AND CONSTRUCTION**

*(a) Construction Procedures*

A franchisee shall construct, operate and maintain its cable system in compliance with all applicable law.

(1) The system shall be subject to inspection by the County for the purpose of ensuring compliance with the franchise agreement and applicable law.

(2) No construction, reconstruction or relocation of the system or any part thereof within the public rights-of-way shall be commenced until all applicable written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the public rights-of-way and for the proper restoration of such public rights-of-way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(3) A franchisee shall participate in any “Miss Utility” program active in its franchise area with regard to giving and receiving notice of the location of facilities and excavations.

*(b) Use of Public Property*

(1) Should the grades or lines of the public rights-of-way that a franchisee is authorized by a franchise to use and occupy be changed at any time during the term of a franchise, the franchisee shall, if necessary, relocate or change its system so as to conform with the new grades or lines.

## **7: DESIGN AND CONSTRUCTION**

### **7(c): Interference with Public Projects**

(2) Any alteration to the water mains, sewerage or drainage system or to any County, state or other public structures in the public rights-of-way required on account of the presence of a franchisee's system in the public rights-of-way shall be made at the sole cost and expense of the franchisee. During any work of constructing, operating or maintaining of a system, the franchisee shall also protect any and all existing structures belonging to the County and any other person.

#### *(c) Interference with Public Projects*

Nothing in this Ordinance or any franchise agreement shall be in preference or hindrance to the right of the County and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should a franchisee's system in any way interfere with the construction, maintenance or repair of such public works or public improvements, the franchisee shall protect or relocate its system, or part thereof, as reasonably directed by any County official, board, authority, commission or public service corporation.

#### *(d) Construction Standards*

(1) The construction, operation, maintenance, and repair of a system shall be in accordance with all applicable law and standards. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standard, if followed, would result in a system that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards). The County may adopt additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner.



## **7: DESIGN AND CONSTRUCTION**

### **7(d): Construction Standards**

(2) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, to the extent technically and financially reasonable.

(3) All installation of electronic equipment shall be of a permanent nature, using durable components.

(4) Without limiting the foregoing, all of a franchisee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements the County shall deem appropriate to make or to interfere in any manner with the legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

(5) All safety practices required by law shall be used during construction, maintenance, and repair of a cable system. The franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(6) In the event of a failure by a franchisee to complete any work required for the protection or restoration of the public rights-of-way, or any other work required by applicable law, within the time specified by and to the reasonable satisfaction of the County, the County, following notice and an opportunity to cure, may cause such work to be done, and the franchisee

## **7: DESIGN AND CONSTRUCTION**

### **7(d): Construction Standards**

shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the County may recover such costs through the security fund provided by a franchisee.

(7) A Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the County of their use of any public rights-of-way.

(8) Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of a system shall be promptly repaired by the franchisee.

(9) A franchisee shall, by a time specified by the County with reasonable notice, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County by reason of traffic conditions; public safety; public right-of-way construction; public right-of way maintenance or repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public-right-of-way vacation; or for any other purpose where the convenience of the County would be served thereby; provided, however, that the franchisee shall, if the County consents, have the privilege of abandoning any property in place.

(10) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the

public rights-of-way, a franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The County may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the public rights-of-way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(11) In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, the County may remove, relay, or relocate any or all parts of that cable system without prior notice.

(12) A franchisee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is the County, in which case no such payment shall be required. The franchisee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(13) A franchisee shall have the authority to trim trees that overhang a public right-of-way of the County so as to prevent the branches of such trees from coming in contact with the facilities, wires and cables of the franchisee. At the option of the County, such trimming may be done by it or under the supervision and direction of the County.

(14) A franchisee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible.

**7: DESIGN AND CONSTRUCTION**  
**7(d): Construction Standards**

(15) System cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all cables and facilities, excluding system passive or active electronics that may be housed in industry-standard low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all cable system cables shall be similarly moved and the cost of movement of its cable shall be solely the obligation of the franchisee, unless compensation is made available under such circumstances to the electric or telephone provider, in which case the cable operator shall not be excluded from such compensation to the extent it is otherwise made available.

(16) The County shall have the right to install and maintain free of charge upon any poles owned by a franchisee any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the franchisee. If the County installs such fixtures and the franchisee later expands its cable system operations in such a way that the County's fixtures unreasonably interfere with the expanded operations, the franchisee may require the County to remove such fixtures.

(17) Prior to erection of any towers, poles, or conduits or the initial construction, upgrade, or rebuild of a cable system in the public rights-of-way, the franchisee shall first submit to the County for approval a concise description of the cable system facilities proposed to be erected or installed, including engineering drawings, if required by the County, together with a map and plans indicating the proposed location of all such facilities, unless

another user of the public rights-of-way has authority to do the work in question and has made the required submission.

(18) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under laws of the State and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the franchisee would have if the work were performed by the franchisee. The franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(19) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.

(20) To the extent technically and financially reasonable, above-ground equipment placed on private property shall be placed at the location requested by the property owner. Whenever above-ground equipment larger than industry-standard low-profile equipment is placed on private property, the franchisee shall provide affected homeowners with at least ten days' advance written notice of its plans to install such equipment; shall make reasonable efforts to confer with such homeowners before any work is done; and shall either provide landscaping camouflage acceptable to the property owner, at the franchisee's expense, or shall provide a cash

## **7: DESIGN AND CONSTRUCTION**

### **7(e): System Tests and Inspections**

allowance to the property owner for such landscaping in the amount of \$200 in 2000 dollars, adjusted annually for inflation based on the Federal Bureau of Labor Statistics Consumer Price Index (CPI-U) for the Washington-Baltimore, District of Columbia, Maryland, Virginia, West Virginia area. The franchisee may provide such allowance either in the form of a credit against subscriber billings, if the property owner is a subscriber, or in the form of a cash payment.

#### *(e) System Tests and Inspections*

(1) Within 60 days after the effective date of an initial franchise agreement, the franchisee shall submit a test plan describing the methods and schedules for testing the cable system on an on-going basis to determine compliance with the provisions of the franchise agreement.

(2) A franchisee shall perform cable system tests as required by applicable law. The tests may be witnessed by representatives of the county, and the franchisee shall submit written test reports to the director.

(3) If more than 10 percent of the locations tested fail to meet the performance standards set by the Federal Communications Commission, the director shall require that the franchisee indicate what corrective measures have been taken and the entire test shall be repeated.

(4) At any time after a franchisee begins service to subscribers, the County may require the franchisee to perform additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal to determine compliance with applicable standards. Additional tests may only be required on the basis of complaints received

or other information indicating an unresolved controversy or significant noncompliance issue, and the additional tests shall be limited to the particular controversy or issue.

(5) The County shall attempt to arrange requests for additional tests so as to minimize hardship or inconvenience to the franchisee or to the subscriber.

(6) The franchisee shall bear the cost of all tests required by Sections 7(e)(1)-7(e)(5).

(7) Nothing in this Ordinance may be construed to prevent the County from conducting technical reviews of cable systems at the County's expense.

*(f) Restoration*

A franchisee promptly shall restore to a condition equal to or better than the original condition any excavation or other disturbance of property. Such restoration shall be undertaken within no more than thirty (30) days after the damage is incurred, and shall be completed as soon as reasonably possible thereafter. The franchisee shall guarantee such restoration for at least one year against defective materials or workmanship.

*(g) Publicizing Proposed Construction Work*

A franchisee shall notify the public prior to commencing any proposed construction that will significantly disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally. The franchisee shall publicize proposed construction work at least one (1) day prior to commencement of that work by causing written notice of such construction work to be delivered to the County and by notifying those persons most likely to be affected by the work in at least two (2) of the following ways: by telephone, in person, by mail,

## **8: CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE**

### **7(h): System Maintenance**

by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice.

#### *(h) System Maintenance*

(1) Interruptions to be Minimized. A franchisee shall schedule maintenance on its system so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the system.

(2) Maintenance Practices Subject to Regulation. Maintenance of the system shall be performed in accordance with the technical performance and operating standards established by FCC rules and regulations. The County may monitor the franchisee's maintenance practices and, to the extent permitted by applicable law, may waive requirements or adopt additional requirements as reasonable to ensure the system remains capable of providing high-quality service.

## **8. CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE**

#### *(a) Management of Channels*

The County may designate one (1) or more entities, including a non-profit access management corporation, to perform any or all of the following functions:

- (1) to manage any necessary scheduling or allocation of capacity on the Institutional Network; and/or
- (2) on the County's behalf, to program any public, educational, or government access channel.



Until such an entity has been designated, the County shall be responsible for these functions.

*(b) Editorial Control*

Except as expressly permitted by federal law, a franchisee shall not exercise any editorial control over the content of programming on designated public, educational and governmental access channels (except for such programming as the franchisee may produce and cablecast on such channels).

**9. CONSUMER PROTECTION**

*(a) General Provisions.* This Section 9 sets forth customer service standards that a franchisee must satisfy. In addition, the franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be amended from time to time.

(1) Nothing in this Ordinance may be construed to prevent or prohibit the establishment or enforcement of any County law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this Ordinance, a franchise agreement or federal or state law.

(2) Nothing in this Ordinance in any way relieves a franchisee of its obligation to comply with other applicable consumer protection laws and its franchise agreement.

*(b) Installations, Connections, and Other Franchisee Services*

(1) **Standard Installations.** Except as federal rate regulations may otherwise require, the franchisee shall not assess a subscriber any cost other than a standard installation

## **9: CONSUMER PROTECTION**

### **9(b): Installations, Connections, and Other Franchisee Services**

charge for service drops of two hundred twenty-five (225) feet or less for a single outlet unless the franchisee demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge.

(2) Non-Standard Installations. Except as applicable law may otherwise require, where pursuant to good engineering practices a drop requires a drop length of over two hundred twenty-five (225) feet, a franchisee may charge a subscriber for franchisee's actual costs associated with installing the drop beyond two hundred twenty-five (225) feet. The subscriber's preference as to the point of entry into the residence shall be observed whenever technically and financially reasonable. The franchisee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken as soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred, subject to reasonable landscaping limitations.

(3) Location of Drops. In locations where the franchisee's system is underground, drops must be placed underground as well. Except as federal law may otherwise require, in any area where a franchisee would be entitled to install a drop above-ground, the franchisee, if requested by the homeowner, shall install the drop underground, but may charge the homeowner the difference between the cost of the above-ground installation and the cost of the underground installation.

(4) Deposits. A franchisee may require a reasonable, non-discriminatory deposit on equipment provided to subscribers, in addition to any allowable monthly rental fees. Any subscriber deposit required by franchisee shall bear interest in accordance with applicable

law or at the going rate, which shall be not less than the prime rate of the bank being used by the County for the conduct of ordinary business. All deposits, with interest, shall be returned to the subscriber within thirty days after return of the equipment.

(5) Antennas and Antenna Switches. A franchisee shall adhere to FCC regulations regarding antenna switches. A franchisee may not require, as a condition to providing cable service, a subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

(6) Delinquent Accounts. A franchisee shall use its best efforts to collect on delinquent subscriber accounts before terminating service. In all cases, the franchisee shall provide the customer with at least ten (10) working days written notice prior to disconnection.

*(c) Telephone and Office Availability*

(1) Each franchisee shall maintain an office at a convenient location in the County that shall be open during normal business hours to allow subscribers to request service, pay bills, and conduct other business.

(2) Each franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained representatives of a franchisee shall be available to respond to subscriber telephone inquiries during normal business hours.

(3) Under Normal Operating Conditions, the following standards shall be met by a franchisee at least ninety (90) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative

**9: CONSUMER PROTECTION**  
**9(d): Scheduling and Completing Service.**

(including hold time) shall not exceed an additional thirty (30) seconds.

- (B) A customer will receive a busy signal less than three percent (3%) of the time.
- (C) When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of a franchisee on the next business day. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this Section.

*(d) Scheduling and Completing Service.*

(1) Under Normal Operating Conditions, each of the following standards shall be met by all franchisees at least 95% of the time, as measured on a quarterly basis:

- (A) An installation located up to 225 feet from a franchisee's existing distribution system shall be completed within seven business days after the order is placed, excluding time required to obtain necessary permits, unless the customer requests a later date;
- (B) An installation not located within 225 feet from a franchisee's existing distribution system shall be completed within 60 days if the distribution system need not be extended for one-half mile or more to provide service or within one year if an extension of the

**9: CONSUMER PROTECTION**  
**9(d): Scheduling and Completing Service.**

distribution system for one-half mile or more is required, excluding time required to obtain necessary permits;

- (C) Work on other requests for service shall be commenced by the next business day after notification of the problem, and the work shall be completed within three days from the date of the initial request. If for reasons beyond the franchisee's control the work can not be completed in the required time even with the exercise of all due diligence, the franchisee shall complete the work in the shortest time possible. A franchisee's failure to hire sufficient staff or to properly train its staff does not justify a franchisee's failure to comply with the required time period. Except as federal law otherwise provides, a charge may not be made to the subscriber for service work, except for the cost of repairs to the franchisee's equipment or facilities if it can be documented that the subscriber damaged the equipment or facility; and
- (D) At a minimum, a franchisee shall perform installations and disconnects during normal business hours.

(2) Appointments. A franchisee shall offer an appointment window for installations, service calls, and other installation activities within the time frame specified in Section 9(d)(1) that will be either a specific time or, at maximum, a 4-hour time block during normal business hours. A franchisee may also offer, in addition to these four-hour windows, larger appointment windows (for example, an entire day).

**9: CONSUMER PROTECTION**  
**9(d): Scheduling and Completing Service.**

(3) Cancellations. A franchisee may not cancel an appointment with a subscriber after the close of business on the business day preceding the appointment. If a franchisee's representative is running late for an appointment with a subscriber and is not able to keep the appointment as scheduled, the subscriber will be contacted, and the appointment rescheduled as necessary, at a time which is convenient for the subscriber.

(4) Other Inquiries. Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving service interruptions must be acknowledged by a trained customer service representative prior to the end of the next business day. A franchisee shall respond to all other inquiries within five (5) business days of the inquiry or complaint.

(5) Except where federal law gives the franchisee a right to impose a charge, no charge shall be made to the subscriber for repairs or maintenance of franchisee-owned equipment or facilities, except for the cost of repairs to the franchisee's equipment or facilities where it can be shown that the equipment or facility was damaged by a subscriber.

(6) A franchisee shall have a policy to compensate a subscriber who experiences a missed appointment due to the fault of the franchisee.

(7) Mobility-Limited Subscribers. With regard to mobility-limited subscribers, upon subscriber request, each franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

## 9: CONSUMER PROTECTION

### 9(e): Interruptions of Service

(e) *Interruptions of Service.* A franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected subscriber's service problems, only after a minimum of forty-eight (48) hours prior notice to subscribers and the County of the anticipated service interruption. The franchisee shall maintain a written log or the equivalent stored in computer memory and capable of access and reproduction on hard copy for all service interruptions and requests for cable service. A franchisee need not give notice to subscribers for planned maintenance that does not require more than two hours' interruption of service and that occurs between the hours of 12:00 midnight and 6:00 a.m..

(f) *Notice to Subscribers.*

(1) When a subscriber is connected or reconnected to a cable system and at least once annually afterwards, the franchisee shall provide each subscriber with written information concerning:

- (A) The procedures for making inquiries or complaints, including the name, address, local telephone number, and email address of the employee or agent to whom inquiries or complaints are to be addressed;
- (B) The County official responsible for regulating the franchise, including the name, telephone number, and email address of the official; and
- (C) The franchisee's business hours, legal holidays, and procedures for responding to inquiries after normal business hours.

## **9: CONSUMER PROTECTION**

### **9(g): Billing**

(2) The franchisee shall provide to all subscribers at least thirty days' written notice before the implementation of any change in rates, programming services, business hours, legal holidays, or procedures for responding to inquiries after normal business hours. At least five working days before the subscriber notice, unless waived by the County, the franchisee shall provide to the County the specific points to be contained in a subscriber notice and the text of the subscriber notice, if available. If the text is not available, it shall be provided to the County as soon as it is available.

(3) The franchisee shall provide the County with copies of all notices provided to subscribers at the same time the notices are first sent to subscribers.

(4) All franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a franchisee shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

#### *(g) Billing*

(1) Bills shall be clear, concise, and understandable. Bills shall fully itemize services, equipment, and any other items for which a franchisee charges a subscriber, including basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.



## 9: CONSUMER PROTECTION

### 9(g): Billing

(2) Refund checks to subscribers shall be issued promptly, but no later than thirty days following:

(1) resolution of the refund request, if service is not terminated; or

(2) the return of all equipment supplied by the franchisee, if service is terminated.

(3) Credits for service shall be issued no later than the subscriber's next billing cycle following the determination that a credit is warranted.

(4) A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(5) A franchisee's billing statement must show a specific payment due date not earlier than the midpoint of the period for which the service being billed is rendered (*e.g.*, the fifteenth day of a thirty-day billing cycle). If a balance due is not received by seven (7) days after the end of the period for which the service being billed is rendered, the franchisee may assess a late fee in accordance with state and local law and judicial decisions. Any late fee shall appear on the following month's billing statement.

(6) A franchisee must notify the subscriber that he or she can remit payment in person at the franchisee's business office and inform the subscriber of the address of that office.

(7) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

## **9: CONSUMER PROTECTION**

### **9(h): Disconnection/Downgrades.**

(8) The account of any subscriber shall be credited a prorated share of the monthly charge for service, upon the subscriber's reasonably prompt request or without a subscriber's request if the franchisee can reasonably identify the affected subscribers, whenever:

- (A) the subscriber is without service for a period that exceeds twelve hours during any twenty-four-hour period; or
- (B) service is substantially impaired for any reason for a period that exceeds twelve hours during any twenty-four-hour period.

(9) The credits required under subsection 9(g)(8) shall not apply if:

- (A) it can be documented that a subscriber seeks a refund for an outage or impairment that the subscriber caused; or
- (B) a planned outage occurred between the hours of 12:00 midnight and 6:00 a.m. and the subscriber had prior notice.

(10) A franchisee shall respond to all written billing complaints from subscribers within thirty (30) days of receipt.

#### *(h) Disconnection/Downgrades.*

- (1) A subscriber may terminate service at any time.
- (2) A franchisee shall promptly disconnect or downgrade any subscriber and may not require a period of notice before the disconnect or downgrade. If the subscriber returns, or permits the franchisee to retrieve, any equipment necessary to receive a service within five (5) business days of the disconnection, the franchisee may not impose a charge for any cable service delivered after the date of the disconnect request.

## **9: CONSUMER PROTECTION**

### **9(h): Disconnection/Downgrades.**

(3) A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the business office. If a franchisee fails to make reasonable efforts to remove its property from a subscriber's premises within 45 days of the termination of service, the property shall be deemed abandoned unless the subscriber is responsible for the franchisee's failure to remove the property.

(4) Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the franchisee has been recovered by the franchisee. The refund must be made pursuant to the schedule for issuance of refund checks in Section 9(g)(2).

(5) If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a franchisee may disconnect the subscriber's service. However, the disconnection may not occur until after forty-five (45) days from the beginning of the period for which the service being billed is rendered, plus at least ten (10) days' advance written notice to the subscriber of the intent to disconnect, given after the 45 days have elapsed. If the subscriber pays all amounts due, including any late charges, before the date scheduled for disconnection, the franchisee may not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of any reconnection charge, the franchisee shall promptly reinstate service.

(6) A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that it has ceased

## 9: CONSUMER PROTECTION

### 9(i): Changes in Service.

the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

(7) A franchisee may disconnect a subscriber who causes signal leakage in excess of federal limits. Disconnection may be effected either:

- (A) after five (5) days' written notice to the subscriber, if the subscriber fails to take steps to correct the problem; or
- (B) without notice if signal leakage is detected originating from the subscriber's premises in excess of federal limits, provided that the franchisee shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber.

(8) A franchisee shall reconnect service to to a subscriber who wishes to have the subscriber's service restored if the subscriber first satisfies any previously owed obligations.

#### (i) *Changes in Service.*

(1) When a franchisee substantially alters the service it provides to a class of subscribers, the franchisee shall provide each subscriber notice as required in Section 9(f), explain the substance and full effect of the alteration, and provide the subscriber with the right to choose to receive any combination of services offered by the franchisee.

(2) A franchisee may not charge for any service or product that the subscriber has not affirmatively indicated the subscriber wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

## **10: RATE REGULATION**

### **9(j): Parental Control Option**

(j) *Parental Control Option.* Upon the request of a subscriber, a franchisee shall make available to each subscriber, for rent or purchase, the option of blocking the video and audio portion of any channel or channels of programming entering the subscriber's home. The control option shall be made available to all subscribers requesting it at the time that cable service is provided or within a reasonable time thereafter.

### *(k) Enforcement*

(1) A franchisee shall keep such records as are necessary to show compliance with these customer service standards and FCC customer service standards.

### *(l) Exclusive Contracts and Anticompetitive Acts Prohibited.*

(1) No franchisee shall demand the exclusive right to serve a person or location as a condition of extending service. This provision shall not prohibit voluntary exclusive agreements to provide cable service.

(2) A franchisee may not engage in unlawful acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the county.

## **10. RATE REGULATION**

The County reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

## **11: REPORTS AND RECORDS.**

### **11(a): Open Books and Records**

## **11. REPORTS AND RECORDS.**

### *(a) Open Books and Records*

(1) A franchisee shall manage all of its operations in accordance with a policy of open books and records.

(2) On reasonable notice the County may inspect at any time during normal business hours all books, records, maps, plans, service complaint logs, performance test results, and other like materials of the franchisee that are reasonably necessary to the performance of any of the County's responsibilities under this Ordinance or a franchise agreement and that are maintained at the local business office required by Section 9(c)(1).

(3) If any books or records that relate to the cable system are not kept in any local office or on reasonable request are not made available to the County at a location of its choosing, and if the County determines that an examination of the records is reasonably necessary to the performance of any of the County's responsibilities under this Ordinance or a franchise agreement, the franchisee shall pay all reasonable and necessary expenses incurred in making the examination.

(4) The County shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the franchisee, and the records shall be exempt from inspection under this section to the extent required by applicable law regarding subscriber privacy.

(5) A franchisee shall have the capability to provide financial information specific to the County to the extent such information may be reasonably necessary to the

**11: REPORTS AND RECORDS.**  
**11(b): Copies of State and Federal Reports**

performance of any of the County's responsibilities under this Ordinance or a franchise agreement.

*(b) Copies of State and Federal Reports*

(1) A franchisee shall submit to the County copies of all nonroutine pleadings, applications, notifications, and documents of any kind that could impact its cable operations within the franchise area that are submitted by the franchisee to any federal or state court or to any federal, state or local regulatory agency or governmental body, together with copies of all decisions, correspondence, and documents evidencing actions by those courts, regulatory agencies, or governmental bodies.

(2) A franchisee may not claim confidential, privileged, or proprietary rights to documents required to be provided by Section 11(b)(1) unless those documents are established by law or by the practices of federal or state agencies as confidential, privileged, or proprietary. The County shall maintain any data exempt from public disclosure in confidence and may not make the data available for public inspection.

*(c) Annual Report*

Unless this requirement is waived in whole or in part by the County, no later than 120 days after the end of its fiscal year, a franchisee shall submit a written report to the County, in a form acceptable to the County, which shall include:

(1) a summary of the previous year's activities in development of the cable system, including services begun or discontinued during the reporting year and the number of subscribers for each class and service tier;

(2) A statement of any projected construction for the next two years;

(3) A detailed copy of updated maps depicting the location of all cable plant in the County;

*(d) Annual Financial Statement*

On an annual basis within 60 days after the close of a franchisee's fiscal year, the franchisee shall furnish to the County a financial statement prepared in accordance with generally accepted accounting principles that reflects the total amounts of gross receipts or gross revenues, as applicable, and all payments, deductions, and computations for the period covered by the statement. The statement shall be:

- (1) Audited and certified by an independent certified public accountant; or
- (2) Certified by a financial officer of the franchisee.

*(e) Quarterly Report*

(1) A franchisee shall complete for each calendar quarter and submit to the director by the tenth day of the month succeeding the calendar quarter a report containing the following information:

- (A) a summary of service requests identifying the number and nature of the requests and their disposition;
- (B) a summary showing the number and nature of service calls during the quarter;
- (C) the total number of subscribers at the end of the quarter;
- (D) results of any proof of performance tests conducted on the cable system during the quarter; and



## **11: REPORTS AND RECORDS.**

### **11(f): Telephone statistics report**

(E) the status on any rebuild or major new construction in progress during the quarter.

#### *(f) Telephone statistics report*

(1) A franchisee shall maintain and organize statistics on a monthly basis for all telephone calls received in each month, whether the calls are received directly by the franchisee or by an answering service. The statistics shall address telephone answer time, including wait time; telephone transfer time; percentage of customers receiving a busy signal; and number of cases where trained customer service representatives did not respond by the next business day to telephone inquiries received after normal business hours. The statistics shall be in a form sufficient to enable the County to determine whether the standards specified in this Ordinance are being met.

(2) Unless the franchise agreement or applicable law requires that the telephone statistics be provided more often, a franchisee shall submit the statistics in a report to the County by the tenth day of the month succeeding each calendar quarter. The report shall show the statistics for the three-month period, plus quarterly totals.

#### *(g) Complaint File*

(1) A franchisee shall keep an accurate record of complaints regarding the cable system and the franchisee's actions in response to those complaints. These records shall be open to the public during normal business hours.

(2) A franchisee shall maintain a log and summary of all service interruptions. The log and summary shall be available for inspection by the County and the public during normal business hours.

## **11: REPORTS AND RECORDS.**

### **11(h): Inspection of Facilities**

#### *(h) Inspection of Facilities*

(1) The County may inspect all construction or installation work performed under the provisions of the franchise agreement and conduct any tests that the County finds necessary to ensure compliance with the terms of this Ordinance and the franchise agreement and other pertinent provisions of law.

(2) A franchisee shall allow the County to make inspections of, the franchisee's facilities and equipment at any time on at least ten days' notice or, in case of emergency, on demand without prior notice, to allow the County to verify the accuracy of any submitted report.

#### *(i) Records Required*

(1) A franchisee shall maintain at all times within its local office the following records:

(A) The complaint records required by Section 11(e) of this Ordinance.

(B) A full and complete set of plans, records, and "as built" maps showing the exact location of all cable system equipment installed or in use in the County, exclusive of individual subscriber service drops.

(C) A copy of its franchise agreement.

(2) The franchisee shall file copies of the following items with the County and post them conspicuously for public inspection in the franchisee's local office:

(A) Franchisee's schedule of charges;

(B) Franchisee's contract or application forms for basic service; and

## **11: REPORTS AND RECORDS.**

### **11(j): Voluminous Materials**

(C) Franchisee's policy for processing of subscriber complaints.

(j) *Voluminous Materials*

If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then a franchisee may request that the inspection take place at some other location, provided that (1) the franchisee must make necessary arrangements for copying documents selected by the County after review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by the County in inspecting those documents or having those documents inspected by its designee.

(k) *Retention of Records; Relation to Privacy Rights*

A Franchisee shall take all steps that may be required to ensure that it is able to provide the County all information which must be provided or may be requested under this Ordinance or its franchise agreement, including by providing appropriate subscriber privacy notices. Nothing in this Section shall be read to require the franchisee to violate 47 U.S.C. § 551. Each franchisee shall be responsible for redacting any data that federal law prevents it from providing to the County. The County retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least three years, with the exception of records pertaining to franchise fees, which shall be kept for at least five (5) years.

(l) *Waiver of Reporting Requirements*

The County may, at its discretion, waive in writing the requirement of any particular report specified in this Section 11.

**12. INSURANCE, SURETY, AND INDEMNIFICATION**

*(a) Insurance*

(1) Throughout the term of a franchise, a franchisee shall maintain:

- (A) worker's compensation insurance in the amount and manner required by state worker's compensation law;
- (B) commercial general liability insurance, including coverage for bodily injury and property damage, in the amount of \$1,000,000 for property damage resulting from any one accident; \$2,000,000 for property damage aggregate; \$1,000,000 for personal bodily injury or death for one person; \$2,000,000 for bodily aggregate per single accident and occurrence; \$2,000,000 for all other types of liability; and
- (C) comprehensive automobile liability insurance, including owned, non-owned, and hired car coverage with coverage for bodily injury and property damage \$2,000,000 for bodily injury and consequent death per occurrence, \$1,000,000 for bodily injury and consequent death to any one person, and \$500,000 for property damage per occurrence.

(2) A franchisee shall furnish the County with certificates of the insurance policies required under this section. A franchisee shall make the actual policies available to the County upon request. Insurance policies shall be in a form satisfactory to the County Attorney and shall require thirty days' written notice of cancellation to the franchisee and to the County.

## **12: INSURANCE, SURETY, AND INDEMNIFICATION**

### **12(b): Indemnification**

If there is a cancellation notice, the franchisee shall obtain, pay the premiums for, and file with the County written evidence of payment of premiums and copies of replacement policies within thirty days after receipt by the county or the franchisee of a notice of cancellation.

(3) The insurance policies required under this section shall:

(A) name the County as an additional insured; and

(B) be primary in coverage to any insurance or self-insurance maintained by the County.

(4) The minimum amounts set forth in the franchise agreement for insurance do not limit the liability of the franchisee to the amounts of that insurance.

(5) All insurance carriers providing the coverage described in this section shall be duly licensed to offer insurance in this state.

#### *(b) Indemnification*

(1) At its sole cost and expense, a franchisee shall indemnify, defend, and hold harmless the County, its officials, boards, commissions, commissioners, agents, and employees, against all liability, loss, claims, suits, judgments, costs, attorney fees, and damages of any kind in any way arising out of or through, or alleged to arise out of or through:

(A) The County's action in granting the franchise;

(B) The acts or omissions of the franchisee and its employees, officers, or agents, arising out of the construction, installation, maintenance, operation, or removal of the cable system, including damage to persons, real property, or personal property caused by the

## **12: INSURANCE, SURETY, AND INDEMNIFICATION**

### **12(b): Indemnification**

construction, installation, operation, maintenance, or removal of any structure, equipment, wire, or cable;

- (C) The acts or omissions of the franchisee, and its employees, officers, or agents, including any failure or refusal by the franchisee, and its employees, officers, or agents, to comply with any obligation or duty imposed on the franchisee by this Ordinance or the franchise agreement;
- (D) Copyright infringements;
- (E) Any failure by the franchisee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the cable system, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Ordinance or the franchise agreement; and
- (F) The exercise by the franchisee of any of the rights conferred on it by this Ordinance or the franchise agreement.

(2) If a claim arises, the County shall tender the defense of the claim to the franchisee. The County may participate in the defense of a claim at its expense. If the County elects to participate in the defense of the claim, the franchisee shall retain the right to settle the claim unilaterally on its own terms and conditions unless the County accepts full responsibility for all damages and costs associated with the claim.

(3) A franchisee is not required to indemnify the County for the negligence or willful misconduct of the County.

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(a): Performance Bond**

(4) A franchisee is not required to indemnify the County for any activity from which the franchisee is immune from liability pursuant to 47 U.S.C. § 558, pertaining to programming for PEG access facilities and leased channels.

(5) The fact that the franchisee carries out activities under the franchise through independent contractors does not constitute an avoidance of or defense to its duty of indemnification under this section.

### **13. PERFORMANCE GUARANTEES AND PENALTIES**

#### *(a) Performance Bond*

(1) Within thirty days after the granting of a new franchise or a renewal that requires significant system construction as specified in the franchise agreement, and before the commencement of construction by the franchisee, the franchisee shall file with the County a performance bond in the amount specified in the franchise agreement in favor of the County and any other person who may be entitled to damages as a result of any occurrence in the construction, operation or termination of the cable system operated under the franchise agreement.

(2) Among other matters, the bond shall cover:

- (A) The payments required to be made to the County under this Ordinance and the franchise agreement; and
- (B) The cost of removal of any facilities or equipment installed by the franchisee if the franchisee defaults in the performance of its franchise obligations.

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(b): Additional Security Fund**

(3) The amount of the bond is not a limitation on the liability of the franchisee for damages.

(4) The County may accept a cash deposit or an irrevocable letter of credit in lieu of a bond required under this Ordinance.

(5) Any security required by this subsection 13(a) shall be:

(A) In a form acceptable to the County Attorney and the County Controller; and

(B) If provided in a form other than cash, from a bonding company or financial institution acceptable to the County Controller.

(6) Reduction of Bond. Upon written application by a franchisee, the County may, at its sole option, in writing, permit the amount of the bond to be reduced or waive the requirements for a performance bond. Reductions granted or denied upon application by the franchisee shall be without prejudice to the franchisee's subsequent applications or to the County's right to require the full bond at any time thereafter. However, no application shall be made by the franchisee within one (1) year of any prior application.

#### *(b) Additional Security Fund*

(1) Within 30 days after the effective date of the franchise, the franchisee shall deposit into a bank account established by the County, and maintain on deposit throughout the term of the franchise, the sum specified in the franchise agreement as security for the franchisee's:

(A) faithful performance of all of the provisions of the franchise and compliance with all orders, permits, and directions of any agency



### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(b): Additional Security Fund**

of the County having jurisdiction over its acts or defaults under this Ordinance or any other provision of this Code; and

- (B) payment of any claims, liens, and taxes due to the County that arise by reason of the construction, operation, or maintenance of the cable system.

(2) The County may permit a franchisee to provide some or all of the security fund in the form of an irrevocable letter of credit in lieu of a cash deposit.

(3) Subject to the provisions of Section 13(b)(4), the security fund may be assessed by the County for:

- (A) failure of the franchisee to pay the County sums due under the provisions of the franchise agreement and this Ordinance;
- (B) reimbursement of costs borne by the County to correct franchise violations not corrected by the franchisee after notice and the opportunity to cure as provided under 13(c) of this Ordinance; and
- (C) monetary remedies, penalties, or damages assessed against the franchisee due to franchise violations.

(4) The County may withdraw the amount due, with interest and any penalties, from the security fund if after thirty days' written notice the franchisee fails to:

- (A) pay to the County any franchise fee or taxes due;
- (B) pay to the County any damages, costs, or expenses that the County is compelled to pay by reason of any act or default of the franchisee in connection with the franchise; or

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(c): Procedure For Remedying Franchise Violations**

(C) comply with any material provision of the franchise that the County determines can be remedied by an expenditure of the security fund.

(5) On any withdrawal from the security fund, the County shall notify the franchisee of the amount and date of withdrawal.

(6) Within 30 days after notice to the franchisee that any amount has been withdrawn by the County from the security fund under this section, the franchisee shall deposit a sum of money sufficient to restore the security fund to the amount required by the franchise agreement.

(7) If the franchise is revoked for cause by reason of the default of the franchisee under Section 13(e) of this Ordinance, the security fund deposited under this section shall become the property of the County.

(8) If there is no outstanding default by the franchisee at the end of ninety days after the expiration of the term of the franchise, the franchisee is entitled to the return of all or any part of the security fund that remains on deposit and to any accrued interest.

(9) The rights reserved to the County with respect to the security fund are in addition to all other rights of the County, whether reserved by this Ordinance or authorized by law. Any action, proceeding, or exercise of a right with respect to the security fund does not constitute an election of remedies or a waiver of any other right the County may have.

#### *(c) Procedure For Remedying Franchise Violations*

(1) If the County determines that a franchisee has failed to perform any obligation under the franchise or has failed to perform in a timely manner, the County may make

### 13: PERFORMANCE GUARANTEES AND PENALTIES

#### 13(d): Monetary Remedies

a written demand on the franchisee that it remedy the violation. If the violation is not remedied or in the process of being remedied to the satisfaction of the County within a reasonable time period following the demand, the County may:

- (A) assess against the franchisee monetary damages as provided in Section 13(d) of this Ordinance;
- (B) request revocation of the franchise as provided in Section 13(e) of this Ordinance; or
- (C) pursue any legal or equitable remedy available under the franchise or any applicable law.

(2) Remedies available to the County for franchise violations under this Ordinance and under a franchise agreement shall be construed, except as otherwise provided in this Ordinance, as cumulative and not alternative.

#### *(d) Monetary Remedies*

(1) For a franchisee's violation of this Ordinance or its franchise agreement, the County may assess against the franchisee liquidated damages up to the limits established in the franchise agreement and assess and withdraw the liquidated damages from the franchisee's security fund.

(2) Alternatively, for a franchisee's violation of this Ordinance or its franchise agreement, the County may assess against the franchisee civil penalties up to the limits specified below and assess and withdraw the civil penalties from the franchisee's security fund.

#### **Violation**

#### **Civil penalty**

### 13: PERFORMANCE GUARANTEES AND PENALTIES

#### 13(d): Monetary Remedies

<b><u>Violation</u></b>	<b><u>Civil penalty</u></b>
I-Net construction delays	\$200 per day.
Failure to obtain permits required for construction	\$50 per occurrence, in addition to any normal cost of permits. If a standard for the failure generally applicable to users of the rights-of-way is specified elsewhere in the code, the general standard applies in place of the amount set forth here.
Obtaining permits or constructing facilities on behalf of another entity	\$1,000 per occurrence, in addition to any normal cost of permits. If a standard for the failure generally applicable to users of the rights-of-way is specified elsewhere in the code, the general standard shall apply in place of the amount set forth here.
Violation of construction standards (such as standards regarding burial of cable)	\$200 per day.
Violation of consumer service standards	\$100 per day or per occurrence, as applicable.
Failure to comply with PEG access requirements	\$125 per day, in addition to any monetary payment due.
Failure to Meet I-Net Technical Performance Standards	Five Hundred Dollars (\$500) per day.
Failure to Meet Requirements for Response to I-Net Outages	Two Hundred Fifty Dollars (\$250) per occurrence.
Failure to supply information, reports, or filings lawfully required	\$200 per day.

### 13: PERFORMANCE GUARANTEES AND PENALTIES

#### 13(d): Monetary Remedies

<u>Violation</u>	<u>Civil penalty</u>
Failure to render payments due to the county, such as franchise fees or liquidated damages	\$100 per day, in addition to any monetary payment due.
Failure to file, obtain, or maintain a bond or letter of credit in a timely fashion	\$50 per day.
Failure to restore damaged property	\$50 per day, in addition to the cost of the restoration.
Violation of technical standards of the FCC	\$100 per day.
Any other violations of this Ordinance, a franchise agreement, or other applicable law	\$200 per day for each violation for each day the violation continues.

(3) For customer service standards that are measured on a quarterly basis, penalties shall be assessed using the procedure specified in a franchisee's franchise agreement for such quarterly standards.

(4) The franchisee shall pay any penalty assessed in accordance with this Ordinance within thirty days after receipt of notice from the County.

(5) If civil penalties are assessed against a franchisee under this section, the franchisee is not subject to liquidated damages payable to the county for the same violation, and vice versa. If the County seeks actual damages for any violation, any penalties or liquidated damages recovered by the County for the same violation, including penalties or liquidated damages for partial time periods included in a longer time period for which actual damages are sought, shall be offset against any actual damages recovered by the County.

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(e): Revocation**

(6) The County may reduce or waive any of the above-listed penalties for good cause shown.

(7) The filing of an appeal to any regulatory body or court does not stay or release the obligations of a franchise under the franchise agreement and applicable law. This provision reflects in part the obligations of a franchisee under applicable law and may not be construed to waive any right or obligation of the County or a franchisee.

(8) An assessment of liquidated damages or civil penalties does not constitute a waiver by the County of any other right or remedy it may have under the franchise or applicable law, including its right to recover from the franchisee any additional damages, losses, costs, and expenses, including actual attorney fees, that were incurred by the County by reason of or arising out of the violation. However, the County's election of liquidated damages under the franchise agreement shall take the place of any right to obtain actual damages over and above the payment of any amounts otherwise due. This provision may not be construed to prevent the County from electing to seek actual damages for a continuing violation if it has imposed civil penalties or liquidated damages for an earlier partial time period for the same violation, subject to the offset specified in 13(d)(5) of this section.

#### *(e) Revocation*

(1) The County may revoke a franchise and rescind all rights and privileges associated with it in the following circumstances, each of which represents a default and a material breach of the franchise:

- (A) the franchisee fails to perform any of its material obligations under this Ordinance or under any documents, agreements, or other terms

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(e): Revocation**

and provisions entered into between the County and the franchisee;

- (B) either (i) there is a repeated and verifiable pattern of noncompliance with FCC technical performance standards, or (ii) the system is unable to meet FCC technical standards at any given test location, due to an inherent system problem, after an initial test and two repeat tests, including a reasonable opportunity to correct the system problem;
- (C) there is a repeated and verifiable pattern of significant noncompliance with the consumer standards set forth in Section 9;
- (D) the franchisee fails to provide continuous and uninterrupted cable service; or
- (E) the franchisee engages in any fraud or deceit upon the County.

(2) To revoke a franchise:

- (A) After taking the steps specified in Section 13(c) the County Administrator or designee shall hold an informal meeting with the franchisee to review the alleged violation. If the meeting does not result in a satisfactory resolution and the franchisee requests an administrative hearing, the franchisee shall be provided with an opportunity to be heard on the alleged violation before the Cable Advisory Commission after 30 days' written notice of the time and the place of the hearing and the allegations of franchise violations.

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(e): Revocation**

(B) After notice is given and any requested administrative hearing is held:

(1) If the Cable Advisory Commission determines that the violation by the franchisee was excusable under Section 18(b) of this Ordinance, it shall order the franchisee to correct or remedy the violation within the additional time and in the manner and on the terms and conditions established by the Cable Advisory Commission.

(2) If the Cable Advisory Commission determines that the violation was inexcusable under Section 18(b) of this Ordinance, the Cable Advisory Commission may place a request for revocation of the franchise before the Board of County Commissioners.

(3) Upon receipt of a request for revocation, the Board of County Commissioners shall issue written notice of its intent to hold a hearing and consider revocation. The notice shall contain the time and place of the hearing, be published at least once ten days before the hearing in a newspaper of general circulation within the franchise area, and be served on the franchisee at least twenty days before the hearing.

(4) The Board of County Commissioners shall hear any persons interested in the revocation and shall determine, based on a preponderance of the evidence, whether the franchisee committed a material breach of this Ordinance or the franchise agreement.



### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(f): Procedures in Event of Termination**

(5) If the Board of County Commissioners determines that the franchisee has committed a material breach, the Board of County Commissioners may:

- (A) by ordinance declare that the franchise is revoked and the security fund and bonds forfeited; or
- (B) by resolution direct the franchisee to take appropriate remedial action for a breach that is capable of being cured within the time and in the manner and on the terms and conditions that the Board of County Commissioners determines are reasonable under the circumstances.

#### *(f) Procedures in Event of Termination*

(1) If a franchise is revoked, expires, or is otherwise terminated, the County may order the franchisee to:

- (A) remove above-ground system facilities from the franchise area within a reasonable period of time as determined by the County; or
- (B) maintain and operate its cable system as in its normal course of business for a period not to exceed twenty-four months from the date of termination and provide cable services of the types provided before termination, in accordance with the provisions of this Ordinance and the terms of the franchise agreement.

(2) In removing its plant, structures, and equipment, the franchisee shall refill, at its own expense, any excavation that is made by it and shall leave all streets and public places

**13: PERFORMANCE GUARANTEES AND PENALTIES**  
**13(g): Termination On Account of Certain Assignments or Appointments**

in as good a condition as that prevailing before removal and without affecting electrical or telephone cable wires or attachments. The indemnification and insurance provisions, the security fund, and the construction and performance bonds shall continue in full force and effect during the period of removal and until full compliance by the franchisee with the provisions of this section.

(3) If a franchisee fails to complete any work required by subsection (a) or (b) of this section or any other work required by law within 90 days after receipt of written notice and to the satisfaction of the County, the County may cause the work to be done and:

(A) the franchisee shall reimburse the County for the costs incurred within 30 days after receipt of an itemized list of the costs; or

(B) the County may recover the costs through the security fund or bonds provided by the franchisee.

(4) The county may seek legal and equitable relief to enforce the provisions of this section.

(5) The termination of a franchise does not affect any of the rights of the County under any provision of law.

*(g) Termination On Account of Certain Assignments or Appointments*

(1) Any franchise shall be deemed revoked one hundred twenty days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. The franchise may be reinstated at the County's sole discretion if within that one hundred twenty-day period:

### **13: PERFORMANCE GUARANTEES AND PENALTIES**

#### **13(h): Relation to Insurance and Indemnity Requirements**

- (A) The assignment, receivership or trusteeship is vacated; or
- (B) The assignee, receiver, or trustee fully complies with the terms and conditions of this Ordinance and the applicable franchise agreement and executes an agreement, approved by a court, under which it assumes and agrees to be bound by the terms and conditions of this Ordinance, the terms and conditions of the franchise agreement, and any other conditions established or required by applicable law.

(2) In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, the County may revoke the franchise, following a public hearing before the Board, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

- (A) The County has approved the transfer of the franchise to the successful bidder; and
- (B) The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the franchise agreement and this Ordinance.

#### *(h) Relation to Insurance and Indemnity Requirements*

Recovery by the County of any amounts under insurance, the security fund, the performance bond, or letter of credit, or otherwise does not limit a franchisee's duty to indemnify the County in any way; nor shall such recovery relieve a franchisee of its obligations under a

franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have.

**14. TRANSFERS**

*(a) Definitions*

(1) In this section the following words have the meanings indicated.

(A) “Control” means the legal or practical ability to exert actual working control over the affairs of a franchisee, either directly or indirectly, and whether by contractual agreement, majority ownership interest, a lesser ownership interest, or other means.

(B) “Transfer” means a transaction in which:

- (1) An ownership or other right, title, or interest of more than ten percent for voting interests or twenty percent for non-voting interests in a franchisee or its cable system is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part;
- (2) There is any change of control of a franchisee;
- (3) The rights or obligations held by a franchisee under the franchise are transferred, directly or indirectly, to another party;
- (4) Any change or substitution occurs in the managing general partners of a franchisee; or

(5) A franchisee, or its corporate parent at any level, enters into a transaction that materially increases, directly or indirectly, the debt that is to be borne by the cable system in a manner that may adversely affect system rates or services.

(C) “Transfer” does not include a transaction involving only persons who own, are owned by, or are under common ownership with the franchisee if the transaction does not materially affect the ultimate control of the franchisee or the sources and amounts of funds available to the franchisee.

(b) *Franchise Obligations.* A franchise is a privilege that is in the public trust and personal to the franchisee. A franchisee's obligations under its franchise involve personal services whose performance involves personal credit, trust, and confidence in the franchisee.

(c) *Approval Required.* Except for the installation of facilities for the franchisee by a subcontractor who works under the franchisee's direct control and supervision, a franchisee may not assign or convey to any entity any right or authority with respect to the use or occupation of the county's public rights-of-way or construction in them. In particular, the franchisee may not obtain permits or construct facilities on behalf of any other affiliated or unaffiliated entity under this franchise.

(d) *Application for Transfer*

(1) Promptly, but at least 120 calendar days before the contemplated effective date of a transfer, the franchisee shall submit to the County a written application for approval of

the transfer. The application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee and on the potential impact of the transfer on subscriber rates and service. Except as otherwise provided in this subsection, at a minimum, the application shall include:

- (A) a complete and un-redacted copy of the agreements to effectuate the proposed transaction and all schedules, exhibits, and other documents attached to them or referred to in them that are not otherwise publicly available;
- (B) information sufficient to demonstrate the legal, financial, and technical qualifications of the proposed transferee;
- (C) information sufficient to demonstrate whether the proposed transaction will have any adverse financial impact on the franchisee or the cable system, including capital investments and projected income statements and cash flow statements covering the lesser of five years or the remainder of the franchise term and clearly explaining all assumptions made in them;
- (D) a general description of the anticipated management structure of the post-transfer cable system and of any financing to be used in connection with the proposed transaction; and
- (E) information sufficient to determine any potential adverse impact of the proposed transaction on subscriber rates and service.

(2) If any of the information required by Section 14(d)(1) is confidential or proprietary, the franchisee shall:

- (A) clearly mark those portions of the document as confidential or proprietary; or
- (B) omit those portions of the documents, substitute a specific description of the contents of the omitted material, and provide a written certification that the material is confidential or proprietary and unrelated to the County's review of the transfer and that the County may promptly review the materials at a mutually convenient time and place.

(3) At the franchisee's option, the franchisee may notify the County of the proposed transaction in general terms at least 150 days prior to the contemplated effective date of a transfer and request that the County waive, reduce, or modify some or all of the information requirements specified in Section 14(d)(1). To the extent consistent with applicable law, the County may grant in writing all or part of the request, without waiving any right the County may have to request that the information be provided after the initial application is filed.

(4) The County will protect information that the franchisee claims to be confidential or proprietary to the extent allowed by applicable law.

(5) To determine whether to grant or deny a transfer, the County may inquire into all qualifications of the prospective transferee and any other matters the County deems necessary. The franchisee and any prospective transferee shall reasonably assist the County in any inquiry and, if they fail to do so, the request for transfer may be denied.

(e) *Approval of Transfer.* In determining whether to grant or deny an application for a transfer, the County may consider:

- (1) the legal, financial, and technical qualifications of the transferee to operate the cable system;
- (2) any potential impact of the transfer on subscriber rates or services;
- (3) whether the incumbent cable operator is in compliance with its franchise agreement and applicable law and, if not, whether the proposed transferee will cure any noncompliance;
- (4) whether the proposed transferee owns or controls any other cable system in the County and whether the transfer may eliminate or reduce competition in the delivery of cable service in the County; and
- (5) whether operation by the transferee or approval of the transfer would have other adverse effects that may lawfully be considered by the County.

(f) *Consequences of Transfer Without Approval.* A transfer of a franchise, franchisee, or cable system or of control over them, including by forced or voluntary sale, merger, consolidation, receivership, or any other means, may not occur without the County's prior consent, as required by this Ordinance. If a transfer occurs without the County's prior written consent, the franchisee shall notify the county promptly. A transfer without the County's prior written consent:

- (1) is ineffective;
  - (2) shall be considered to impair the County's assurance of due performance;
- and



## **15: OPEN VIDEO SYSTEMS**

### **14(g): Liability of Franchisee**

(3) shall be, in addition to any other remedies available under the franchise agreement or applicable law, grounds for revocation pursuant to Section 13(e) of this Ordinance.

#### *(g) Liability of Franchisee*

(1) In addition to any other liability provided by law, a franchisee is liable under its franchise for a transfer that violates the terms of its franchise, whether the transfer is caused in whole or in part by:

(A) the franchisee; or

(B) another person, parent, or affiliated entity, in which event the franchisee is liable as if the transfer had been caused by the franchisee itself.

(2) A franchisee is responsible for ensuring that the intent of this section is carried out. If for any reason an event occurs that would require the county's approval under this section, whether or not the event is directly or indirectly within the franchisee's control, the event constitutes a transfer for purposes of the franchise agreement and applicable law.

*(h) Closing Documents.* Upon the County's request, a franchisee shall provide the County with a complete copy of the closing documents after the closing of a transfer.

## **15. OPEN VIDEO SYSTEMS**

#### *(a) Applicability of Ordinance*

(1) This Ordinance shall apply to open video systems that comply with 47 U.S.C. § 573, to the extent permitted by applicable law, except that Section 15(b) shall apply in place of the following sections: § 6 (franchise applications), § 10 (rate regulation).

**15: OPEN VIDEO SYSTEMS**  
**15(b): Application for Open Video System Authorization**

(2) In applying this Ordinance to an open video system, “franchisee” shall be taken to refer to the open video system operator, “cable system” to the open video system, “franchise” to any authorization granted by the County to the open video system operator, and similar terms shall apply similarly.

*(b) Application for Open Video System Authorization*

(1) A person proposing to use public rights-of-way to install devices for the operation of an open video system shall first obtain authorization from the County for such use. Such a person may apply for such authorization by submitting an application containing:

- (A) The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with three percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person.
- (B) A detailed description of the physical facilities the applicant proposes to place in public ways.
- (C) Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law and with this Section 14(a).

(D) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal and state law requirements.

(2) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section 15(b).

(3) Upon the County's grant of open video system authorization, the applicant shall pay to the County \$25,000. This payment shall be non-refundable and shall be used to offset in whole or in part any costs incurred by the County in granting the authorization. In addition, the County may require the applicant to reimburse the County for any additional reasonable out-of-pocket expenses the County incurs in considering the application, including consultants' fees.

*(c) Fee In Lieu of Franchise Fee*

An open video system operator shall pay to the County a fee in lieu of the franchise fee required of a cable operator, pursuant to the procedures and conditions specified in a cable franchise and generally herein.

*(d) Public, Educational, and Governmental Access Obligations*

An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to applicable law and to the requirements herein.

*(e) Right-of-Way Usage*

An open video system operator shall be subject to all requirements of state and local law regarding authorization to use or occupy the public rights-of-way, except to the extent

## **16: RIGHTS OF INDIVIDUALS PROTECTED**

### **16(a): Discriminatory Practices Prohibited**

specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the public rights-of-way that such operator would not otherwise possess.

## **16. RIGHTS OF INDIVIDUALS PROTECTED**

### *(a) Discriminatory Practices Prohibited*

(1) A franchisee may not deny service or access or otherwise discriminate against subscribers, PEG access facility users, or any individual on the basis of income, race, color, religion, national origin, age, sexual orientation, or sex.

(2) A franchisee shall adhere to the equal employment opportunity requirements of federal, state, and local laws and regulations.

(3) A franchisee shall operate its system in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, and other agencies having legitimate use for the system and may not arbitrarily exclude any person from its use.

(b) *Subscriber Privacy.* A franchisee's policy with regard to personally identifiable information shall be consistent with the applicable provisions of federal and state law.

**17. ADMINISTRATION**

(a) *Duties of the County Administrator.* The County Administrator, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and franchise agreements. The County Administrator shall be empowered to take all administrative actions on behalf of the County, except for those actions specified in this Ordinance that are reserved to the Board of County Commissioners. Such actions that the County Administrator shall be empowered to take, either directly or through a duly appointed designee, shall include but are not limited to providing a cable operator with notice of and opportunity to cure any franchise violation, failure to substantially comply with the material terms of a franchise, or failure to provide a quality of service that is reasonable in light of community needs, pursuant to 47 U.S.C. § 546(c)-(d). The County Administrator may recommend that the Cable Advisory Commission or the Board of County Commissioners, as appropriate, take certain actions with respect to a franchise. The County Administrator shall keep the appropriate body apprised of developments in cable and provide them with assistance, advice and recommendations as appropriate.

**17: ADMINISTRATION**  
**17(b): Duties of the Board of County Commissioners**

(b) *Duties of the Board of County Commissioners.* The Board of County Commissioners shall have the sole authority to regulate rates for cable service; grant franchises, authorize the entering into of franchise agreements, modify franchise agreements, renew franchises, revoke franchises, authorize the transfer of a franchise; and impose penalties pursuant to this Ordinance.

(c) *Cable Advisory Commission*

(1) There is hereby established the Cable Advisory Commission, which shall consist of five members appointed by the Board of County Commissioners for terms specified by the Board. Vacancies shall be filled for any unexpired term in the manner of original appointment. Each member shall serve until a successor is appointed and qualified. Members of the Commission shall serve at the pleasure of the Board of County Commissioners. Any member who ceases to reside within the County shall immediately forfeit his office.

(2) The Commission shall meet from time to time as the need arises to accomplish the purposes of this Ordinance. Three (3) members shall constitute a quorum at any meeting.

(3) The budget of the Commission shall be established by the Board of County Commissioners. The County Administrator or designee shall serve as professional staff to the Commission. The County Attorney shall provide legal assistance to the Commission.

(4) The Commission shall have the following general powers and duties:

(A) Invite, receive, review, and evaluate applications for franchises and, following public hearings thereon, recommend to the Board of

County Commissioners the approval of franchises whose approval is in the public interest.;

- (B) Hold administrative hearings and make recommendations to the Board of County Commissioners regarding franchise revocations pursuant to Section 13(e)(2).
- (C) Encourage the use of access channels among the widest range of institutions, groups, and individuals within the County;
- (D) Audit all franchise records as necessary or appropriate and, in the Commission's discretion, require the preparation and filing of information additional to that required herein;
- (E) Retain experts and consultants to assist in its work, subject to approval of the Board of County Commissioners;
- (F) Conduct periodic evaluations of cable systems and, pursuant thereto, make recommendations to the Board for amendments to this Ordinance or franchise agreements;
- (G) Arrange for and conduct public hearings;
- (H) Report to the Board of County Commissioners as the Board may require with regard to matters relating to cable systems and cable operators;
- (I) Review and recommend to the Board of County Commissioners regulations relating to cable systems and cable operators;

## **18: MISCELLANEOUS PROVISIONS**

### **18(a): No Recourse Against the County**

(J) Seek to resolve disagreements among franchisees, subscribers, and public and private users of system facilities.

(5) Public hearings held by the Commission shall be advertised prior to such hearings, stating the date, time, place, and subject matter.

(6) The Commission may delegate to an appropriate person or agency any of its powers or duties.

## **18. MISCELLANEOUS PROVISIONS**

### *(a) No Recourse Against the County*

A franchisee has no recourse against the County or its officials, boards, commissions, agents or employees for any loss, costs, expenses, or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise. This section does not preclude recourse by a franchisee if the loss, costs, expenses, or damages arise from willful misconduct by the County.

### *(b) Force Majeure*

(1) If a franchisee's performance of any of the terms, conditions, obligations, or requirements of the franchise is prevented or impaired due to any cause beyond the franchisee's reasonable control, the inability to perform shall be excused and penalties or sanctions may not be imposed. The franchisee shall notify the director in writing within 30 days of its discovery of the occurrence of an event beyond its reasonable control.

(2) Causes beyond a franchisee's reasonable control or causes not reasonably foreseeable include but are not limited to acts of God and civil emergencies. The County and the



## 18: MISCELLANEOUS PROVISIONS

### 18(c): Rights and Remedies

franchisee may further define in the franchise agreement those conditions to be considered as “*force majeure*.”

#### (c) *Rights and Remedies*

(1) The County may intervene in any suit or proceeding that relates to a County franchise.

(2) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(3) A franchisee is not relieved of its obligation to comply with any of the provisions of this Ordinance or the franchise agreement by reason of any failure of the County to enforce prompt compliance.

#### (d) *Connections to System; Use of Antennae*

A franchisee may not require, as a condition to providing cable service, a subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

#### (e) *Calculation of Time*

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Ordinance or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

*(f) Severability*

If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County and shall thereafter be binding on the franchisee and the County.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

APPROVED:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
County Clerk

APPROVED AS TO FORM:

REVIEWED BY:

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
County Administrator